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## Chapter 18: Enhancing Government Transparency

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# Chapter 18: Enhancing Government Transparency

*Julia DeVos*

## *Code Sections Affected*

Government Code §§ 84203-84204, 84215, 84218, 84225, 84605, 85200, 86100, 86107, and 86118 (amended).  
AB 1181 (Huber); 2010 STAT. Ch. 18.

## I. INTRODUCTION

In the June 2010 election, \$46 million in cash went to support Proposition 16, a ballot initiative sponsored by Pacific Gas and Electric Company (PG&E).<sup>1</sup> 100% of these funds came from PG&E.<sup>2</sup> Proposition 16 failed, possibly due to the public's knowledge that only the company proposing the initiative provided all of the funding for it.<sup>3</sup> Elections such as this demonstrate the need for greater public access and transparency in relation to campaign contributions.<sup>4</sup>

Despite efforts to increase the transparency of government activities, many California voters lack knowledge and awareness of the spending activities of government entities, especially those of that support candidates and lobbying organizations.<sup>5</sup> Assembly Member Alyson Huber introduced Chapter 18 in order to “provide[] the openness and political disclosure envisioned by the voters when they approved the Political Reform Act.”<sup>6</sup>

## II. LEGAL BACKGROUND

In 1974, California enacted the Political Reform Act, creating the Fair Political Practices Commission and requiring the disclosure of contributions and expenditures in connection with campaigns, ballot measures, and lobbying efforts.<sup>7</sup> In an attempt to improve public access to contribution and expenditure information, the California Legislature enacted the Online Disclosures Act in

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1. Michael Hiltzik, *Power Grab Hits a Wall*, L.A. TIMES (June 13, 2010), at B1. Proposition 16 was an initiative on the June 2010 ballot proposing a constitutional amendment requiring a two-thirds vote for local governments to start up public electricity providers. LEGISLATIVE ANALYST'S OFFICE, ANALYSIS OF PROPOSITION 16 (Feb. 17, 2010) (on file with the *McGeorge Law Review*).

2. Hiltzik, *supra* note 1.

3. *See id.* (“We may finally have discovered a remedy for corporate executives with more greed than brains: Let them invest corporate funds by the millions in California ballot initiatives, then vote the things down.”).

4. *See id.* (“[T]he antidote to unrestrained corporate political spending is to make sure that voters know that a corporate interest is behind an ad, an issue campaign or a candidate.”).

5. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF AB 1181, at 3 (Apr. 21, 2009).

6. *Id.* (quoting Assembly Member Alyson Huber).

7. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 3 (May 20, 2010).

1997.<sup>8</sup> The Online Disclosures Act requires the Secretary of State to develop and implement a process for filing reports and statements online, and to provide public access to those documents.<sup>9</sup> This legislation required candidates, committees, and slate mailer organizations with expenditures or contributions of \$50,000 or more to file either electronically or online.<sup>10</sup> Additionally, it required lobbyists, lobbyist employers, and lobbying firms with \$5,000 or more in reportable payments, expenses, gifts, or other items in a calendar year to file either electronically or online.<sup>11</sup> The Online Disclosures Act, however, had a loophole; it allowed entities to avoid filing electronically or online by staying under the \$50,000 or \$5,000 triggering amounts.<sup>12</sup>

In 2001, the California Legislature passed Chapter 917, which was aimed at making online reporting less costly for those required to report electronically or online.<sup>13</sup> The statute requires the Secretary of State to provide a free method for mandatory electronic or online filing, and appropriated funds for the purpose of developing the free filing system.<sup>14</sup> Although the deadline for completing the free online system was December 2002, the Secretary of State did not accomplish it until February 2007.<sup>15</sup>

### III. CHAPTER 18

Chapter 18 adds additional requirements to the Political Reform Act of 1974 and the Online Disclosures Act.<sup>16</sup> These requirements affect the filing of late contributions and independent expenditures, the monetary thresholds triggering required electronic reporting of campaign contributions and expenditures, the

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8. 1997 Cal. Stat. ch. 866, § 1 (enacting CAL. GOV'T CODE §§ 84600-84610).

9. *Id.* § 84602.

10. *Id.* § 84605.

11. *Id.*

12. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF AB 1181, at 3 (Apr. 21, 2009); see Press Release, Secretary of State Debra Bowen, Secretary of State Debra Bowen Unveils Her 2009-2010 Legislative Priorities (Mar. 10, 2010) [hereinafter Bowen Press Release], available at <http://www.sos.ca.gov/admin/press-releases/2009/db09-012.pdf> (on file with the *McGeorge Law Review*) (describing AB 1181 as “closing the loophole that exempts some state candidates, committees, slate mailing organizations, and lobbying entities from filing electronic reports with the Secretary of State”).

13. See SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 2-3 (July 7, 2009) (describing Chapter 917 requiring the Secretary of State to provide a free online filing system for individuals required to file electronically or online); see also SENATE FLOOR, COMMITTEE ANALYSIS OF AB 696, at 2-3 (Sept. 9, 2001) (describing the costs for electronic filing “from \$50 to \$2,000 per filing”).

14. CAL. GOV'T CODE § 84602 (amended by 2001 Stat. Ch. 917); SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 2-3 (July 7, 2009).

15. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 3 (July 7, 2009).

16. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 1-2 (May 20, 2009).

filing of campaign reports, and state lobbying.<sup>17</sup> Under Chapter 18, it is likely that more candidates and other entities will be required to file spending reports and statements online or by electronic transmission.<sup>18</sup> Electronic filing is accomplished when a document is uploaded over the Internet to a specified file server.<sup>19</sup> Cumulative campaign contributions and expenditures over \$25,000 must be filed online or by electronic transmission.<sup>20</sup> Lobbyists, lobbying firms, lobbyist employers, and others<sup>21</sup> must report, online or electronically, reportable payments, expenses, contributions, gifts, and other items exceeding \$2,500 in a calendar quarter.<sup>22</sup>

Lobbyists must also file their registration statements, and any amendments to those statements, either online or by electronic transmission, and in a paper format.<sup>23</sup> Candidates and committees must report late contributions and independent expenditures by facsimile, guaranteed overnight delivery, or personal delivery within twenty-four hours of when the contribution was received or the expenditure was made.<sup>24</sup> Independent expenditures must be reported either online or by electronic transmission to the Secretary of State, if their reporting is mandatory.<sup>25</sup>

Additionally, Chapter 18 limits the entities with whom a candidate or elected official is required to file a paper copy of their campaign statements, and requires

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17. *Id.*

18. See ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF AB 1181, at 3 (Apr. 21, 2009) (quoting Assembly Member Huber: “Thus, thousands of candidates, donors, campaign officials, and special interests are still allowed to submit disclosure forms that are not available online.”); see also SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 4-5 (July 7, 2009) (stating that one of the effects of the bill will likely be that entities that are not currently required to file electronically or online will be required to do so).

19. CALIFORNIA SECRETARY OF STATE, POLITICAL REFORM DIVISION, ELECTRONIC FILING INFORMATION, FREQUENTLY ASKED QUESTIONS, <http://www.sos.ca.gov/prd/faqs.htm> (last visited Feb. 5, 2011) (on file with the *McGeorge Law Review*). The Secretary of State limits electronic filing to the above definition and does not consider fax, e-mail, floppy disks or compact disks to be proper filing methods. *Id.*

20. CAL. GOV'T CODE § 84605 (amended by Chapter 18). This requirement applies to candidates, committees, general purpose committees that support or oppose candidates, and slate mailer organizations connected with state elective offices or state measures. *Id.*

21. *Id.* § 86115(b) (amended by Chapter 18) (“Other” entities this provision applies to include: “Any person who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars (\$5,000) or more in value in any calendar quarter, unless all of the payments are of the type described in subdivision (c) of Section 82045.”).

22. *Id.* § 84605 (amended by Chapter 18).

23. *Id.* § 86100(e) (amended by Chapter 18).

24. *Id.* §§ 84203-84204 (amended by Chapter 18). The California Secretary of State defines late contributions and expenditures as those made in the sixteen days prior to an election up to the day before the election. CALIFORNIA SECRETARY OF STATE, POLITICAL REFORM DIVISION, CAMPAIGN DISCLOSURE AND REQUIREMENTS, [http://www.sos.ca.gov/prd/campaign\\_info/filing\\_requirements/bmc\\_campaign\\_and\\_registration\\_requirements.htm](http://www.sos.ca.gov/prd/campaign_info/filing_requirements/bmc_campaign_and_registration_requirements.htm) (last visited Feb. 5, 2010) (on file with the *McGeorge Law Review*).

25. CAL. GOV'T CODE §§ 84203-84204 (amended by Chapter 18). It is not necessary to file a paper copy of a late contribution or independent expenditure report if the report is filed online or by electronic transmission. *Id.*

some candidates or elected officials to file campaign statements online or electronically.<sup>26</sup> Candidates and elected officials must file paper copies of their campaign statements in the county in which they are domiciled.<sup>27</sup> Statewide elected officers must file a paper copy of their campaign statements with the Secretary of State, but no longer have to file a paper copy of campaign statements with Los Angeles and San Francisco Counties.<sup>28</sup> Candidates or committees in jurisdictions that contain part of two or more counties are still required to file paper copies of their campaign statements in the county with the largest number of registered voters within that jurisdiction.<sup>29</sup>

#### IV. ANALYSIS OF CHAPTER 18

Chapter 18 aims to increase transparency of government actions by requiring online or electronic transmission for contributions and expenditures at lower monetary thresholds, and requiring more entities to file online or by electronic transmission.<sup>30</sup> The author of Chapter 18, Assembly Member Huber, stated: ““This bill will improve transparency by making it easier for the public to track how money is raised and spent . . . . We should be doing everything we can to make government as open as possible and this bill moves us in that direction.””<sup>31</sup> There was no registered opposition to Chapter 18.<sup>32</sup>

##### A. Support for Enhancing Government Transparency

The Office of the Secretary of State sponsored Chapter 18, with support stemming from California Common Cause, Fair Political Practices Commission, League of Women Voters of California, and CALPIRG.<sup>33</sup> These organizations support Chapter 18, in part, because of its potential for enhancing government transparency and increasing public awareness.<sup>34</sup> Because of the high (\$50,000 and

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26. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 1-2 (July 7, 2009).

27. CAL. GOV'T CODE § 84215 (amended by Chapter 18). Officers, candidates, and committees of counties must file in the county, while officers, candidates, and committees of cities must file in the city in which they are domiciled. *Id.*

28. *Id.*; ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 2 (Apr. 16, 2010).

29. CAL. GOV'T CODE § 84215 (amended by Chapter 18). Candidates in legislative districts, State Board of Equalization districts, or appellate court districts do not have to file in the county with the largest number of registered voters. *Id.*

30. BACKGROUND SHEET AB 1181 (HUBER) CAMPAIGN ELECTRONIC DISCLOSURES (June 6, 2010) [hereinafter BACKGROUND SHEET] (on file with the *McGeorge Law Review*).

31. Press Release, Office of Assemblywoman Alyson Huber, Huber Bill to Increase Government Transparency Signed by Governor (May 10, 2010) (on file with the *McGeorge Law Review*).

32. See generally SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 2 (Aug. 19, 2009) (showing no recorded opposition to Chapter 18).

33. BACKGROUND SHEET, *supra* note 30.

34. *Id.*

\$5,000) monetary thresholds triggering online filing, previous law allowed many candidates, committees, slate mailer organizations, and lobbying entities to submit disclosure forms that were not available online.<sup>35</sup> Supporters believe that Chapter 18 closes a loophole which exempted some entities from filing electronic reports, and that closing that loophole will increase public access to those reports.<sup>36</sup>

In addition to the increase in the transparency of campaign funds, proponents of Chapter 18 also support the increased availability of campaign, ballot, and lobbyist statements.<sup>37</sup> Candidates for the Legislature and Board of Equalization, court of appeal justices, and superior court judges must file their campaign statements online or by electronic transmission, and in paper format with the Secretary of State.<sup>38</sup> Candidates for the Board of Administration of the Public Employees Retirement System must also file their campaign reports online or by electronic transmission with the Secretary of State.<sup>39</sup> One supporter, Secretary of State Debra Bowen, stated: ““These common-sense bills will make it easier for Californians to exercise their constitutional right to vote, to ensure that election results are accurate, and to access key records.””<sup>40</sup>

#### *B. Concerns Regarding the Online Disclosure System*

While Chapter 18 has no official opposition, there are concerns regarding the bill.<sup>41</sup> One concern is that expanding the online disclosure system is inappropriate at this time.<sup>42</sup> This concern arises because, in the twelve years since the Legislature mandated an online disclosure system, there has been no determination that the system operates effectively.<sup>43</sup> While the Secretary of State and Fair Practices Commission did hold a public hearing to assess the operations of the online disclosure system, the Secretary of State failed to make a determination about the effectiveness of the system.<sup>44</sup> It remains questionable

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35. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 2 (Aug. 19, 2009) (“This bill lowers the monetary threshold which triggers mandatory electronic reporting.”).

36. See Bowen Press Release, *supra* note 12 (describing the exemption from electronic filing as a loophole); see also BACKGROUND SHEET, *supra* note 30 (stating that AB 1181 would limit the exemptions from electronic or online filing by lowering the thresholds that trigger electronic or online filing and therefore improve public access to campaign statements and reports).

37. See Bowen Press Release, *supra* note 12 (listing AB 1181 among bills providing “access [to] key records”).

38. CAL. GOV’T CODE § 84215 (amended by Chapter 18).

39. *Id.* § 84225 (amended by Chapter 18).

40. Bowen Press Release, *supra* note 12.

41. See SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 4-5 (July 7, 2009) (questioning whether the online disclosure system can operate effectively).

42. *Id.*

43. *Id.*

44. *Id.*

whether a system that has not been determined to be effective should be expanded.<sup>45</sup>

## V. CONCLUSION

Prior to Chapter 18, the threshold limits for triggering online or electronic transmission of expenditures and contributions for candidates, committees, slate mailer organizations, and lobbying entities were high, resulting in many exemptions from electronic filing.<sup>46</sup> Those exemptions became unnecessary with the implementation of free online filing.<sup>47</sup> Chapter 18 lowers those monetary thresholds and requires more documents to be filed online or by electronic transmission.<sup>48</sup> Supporters believe requiring online or electronic filing at lower thresholds will create greater transparency in government actions.<sup>49</sup> While more information will be available to inform voters, it remains unclear whether the availability of this information will actually result in a greater number of educated voters or better-educated voters.

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45. *Id.*

46. BACKGROUND SHEET, *supra* note 30.

47. *Id.*

48. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 1 (July 7, 2009).

49. BACKGROUND SHEET, *supra* note 30.